

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

11 Cr. 31 (S-1) (KAM)

:

-against-

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**NOTICE OF CROSS-MOTION  
TO DISMISS INDICTMENT**

NEIL MESSINA,

:

:

Defendant.

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PLEASE TAKE NOTICE that, upon the accompanying declaration of Gerald J. McMahon, duly executed on the 16<sup>th</sup> day of February, 2014, and the accompanying memorandum of law, defendant Neil Messina will cross-move this Court, before the Honorable Kiyo A. Matsumoto, Courtroom 6G North, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, at 9 a.m. on February 18, 2014, for an order:

1. Pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution, dismissing the indictment because of outrageous government misconduct;
2. Alternatively, precluding the government from calling cooperating witness William Caroleo at the scheduled *Fatico* Hearing for defendant; and
3. Granting defendant Neil Messina such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 16, 2014

Respectfully submitted,

/s/ Gerald J. McMahon  
Gerald J. McMahon, Esq.  
*Attorney for Defendant Neil Messina*  
The Standard Oil Building  
26 Broadway, 18<sup>th</sup> Floor  
New York, New York 10004  
(212) 797-1877 (tel)  
(212) 797-1419 (fax)  
[gm@geraldjcmahon.com](mailto:gm@geraldjcmahon.com) (e-mail)

To: All Counsel  
(By ECF)

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